IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION APPLICATION NO. 56 OF 2005

M/s. Jalaram Construction Co. .. Applicant

Vs.

The Engineer-in-Chief and ors. .. Respondents

Mr. H. Toor i/by Cr. Bayley and Co. for applicant.
None for the respndents.

CORAM : B. H. MARLAPALLE,J.

Date : March 10, 2006.

P.C.:

1. Heard. The applicant was entrusted with the work of "Construction of Magazines and other facilities" of Torpedoes at NAD Trombay by the acceptance of the tender dated 14/5/1994 and the contract amount was Rs.2,52,87,655/-. The Work Order was issued on 20/5/1994 in favour of the applicant. The work under the contract was completed on 16/7/1998 and the respondent no.3 had issued the completion certificate on 23/7/1998. The applicant-firm by its letter dated 4/2/2002 raised in all 13 claims under dispute and by its letter dated 15/1/2004 requested the Engineer-in-Chief to refer the said claims to arbitration under Condition No.70 of IAFW 2249. By letter dated 10/8/2004 the Engineer-in-Chief appointed one Mr. T.K. Saha as the sole Arbitrator and the

applicant noted that four of the claims were not referred to the Arbitrator, namely, Claim Nos.2,9,10 and 11. The said claims read as under:-

2.	Claim for provision of RCC traverse wall for a height of 3 meters above G.L. incl. earthwork instead of C.A. provision of RCC wall 3 mtrs. height from the top of RCCraft including earthwork.	25,00,000/-
9.	Claim for wrong pricing of deviation order for provision of steel doors in lieu of wooden doors in magazines A/c /Non A/c.	2,50,000/-
10.	Claim for damages for breach of contract resulting in prolongation of work by 25 1/2 months necessitating avoidable extra expenditure for overheads, supervision and other administrative expenses not catered for in quoted rate.	20,00,000/-
11.	Claim for loss of profit due to breach of contract resulting in prolongation of work by 25 1/2 months.	20,00,000/-

Hence this application for directions to include the remaining four claims i the present arbitral proceedings.

2. A reply has been filed on behalf of the

respondents by the Assistant Garrison Engineer and the applicant has been opposed on the ground that the said four claims are accepted claims in as much as they were already settled as per Condition No.62 of IAFW 2249.

3. Whether the claims are excepted or they are beyond the arbitral proceedings is a matter which could be gone into by the Arbitrator in an application under Section 16 of the Act and this application filed under Section 11 of the said Act for directions to add the balance claims in the present arbitral proceedings cannot be turned down on that ground or on the grounds contended in the reply. The learned counsel for the applicant has rightly placed his reliance on the following decisions:-

(a) Suresh Chand Ahuja vs. Govt. of N.C.T. of Delhi and ors. [2001 (1) Recent Arbitration Judgments 288 (Del)].

(b) Earnest Builders vs. Union of India & ors. [2002 (3) Recent Arbitration Judgments 88 (Del)].

4. This application is, therefore, allowed and it is directed that the above mentioned four claims shall be added to the claims already referred to the Arbitrator by the order dated 10/8/2004 and it shall be open for the respondents to agitate the issue of

maintainability of these claims before the Arbitrator under Section 16 of the Act. It is further directed that if such an application under Section 16 is filed within a period of eight weeks from today, the same shall be decided on its own merits as expeditiously as possible and in any case within eight weeks from its presentation.

5. Application disposed off in terms of the above directions.

(B.H. Marlapalle, J.)